IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 611 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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NARENDRA C BHATT - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR AD SHAH for Appellant(s) : 1,
MR AJ DESAI, LD.APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 07/08/2007

CAV JUDGMENT

1. The appellant-orig.convict (hereinafter referred to as 'the appellant') has preferred this appeal under Section 374 read with Section 386 of the Code of Criminal Procedure, 1973, challenging the judgment and order of

conviction and sentence dated 31st July 1991, passed by the learned Special Judge, City Sessions Court, Ahmedabad City, in Special Case No.12 of 1989, whereby the learned trial Judge has held the appellant guilty of the charge of offences under Sections 7 and 13(1)(d)(ii) of the Prevention of Corruption Act.

2. The legality and validity of the judgment and order of conviction and sentence has been challenged on various grounds as mentioned in paragraph no.7 of the memo of the appeal. Shri A.D. Shah, learned counsel appearing for the appellant and Shri A.J. Desai, learned Additional Public Prosecutor, appearing on behalf of the respondent-State, have taken this Court through the judgment and order of conviction and sentence under challenge and so also the basic facts which were placed by the prosecution before the learned trial Judge. At the conclusion of the trial, it has been held that the appellant has committed the said offences on 22nd September 1988 as a public servant in discharge of his duty as Inspector

of Food and Civil Supply Department, Zonal Office, Rakhial, Ahmedabad. Ex.2 is the charge framed by the learned trial Judge against the appellant. It would be beneficial to narrate the gist of the said charge framed by the learned trial Judge because it also reflects salient basic features of the story of the case of prosecution, which is as under :

(i) You, the accused, were discharging your duties as Supply Inspector in the Rakhial Zonal Office, Food and Civil Supply Authority in the month of September, 1988 and thereby, you were a public servant.

(ii) On 20th September 1988, you were In-charge Zonal Officer in the Rakhial Zonal Office of the Food and Civil Supply Department. The complainant of this case had made an application to you for obtaining permission and you had told him to come on the next day; and when the complainant met you even

on the next day, you had told him to come on the next day, and the complainant had met Shri Solanki, Zonal Officer of the Zonal Office and the said Shri Solanki had instructed you on telephone that as the Government godown would be closed for a period of eight days, if any businessmen come for obtaining permit, then he should be given permit and his application should not be rejected. On that day i.e. on 21st September 1988 at about 01-45 p.m., this complainant had also asked you, the accused, to give him permit. At that time, you had told him that today I am giving you permit but you don't understand the custom. You will have to give the amount of Rs.200/- per month and if the same is not given, you will not be given permit in future, and by checking your shop occasionally, the stock will be checked and if a minor mistake will be there, then a report will be made to

the Director of Food and Civil Supply for cancellation of your licence. Therefore, the complainant had agreed to give you the said amount per month. Therefore, when you had asked to pay the said amount today only, the complainant had said that as the amount at present lying with him is to be deposited in the Bank, no arrangement can be done. Hence, you had told him to pay you the said amount on the next day between 01-00 p.m. and 03-00 p.m.

(iii) That on 22th September 1988, when the complainant met you in your office in the noon, you had called him outside your room in the balcony and after calling him in the balcony, when you had demanded the aforesaid amount, the complainant had given the said amount of Rs.200/- which was accepted by you.

(iv) Thus, by doing so, you the accused

have committed offence under Section 7 of the Prevention of Corruption Act, 1988 by taking illegal gratification being the Government employee from the complainant with a view to give him permit.

(v) Further, on the aforesaid date, time and place, you the accused have committed offence under Section 13(1)(d)(ii) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 by demanding the amount towards illegal gratification from the complainant as stated aforesaid and by misusing your post as the Government employee/ public servant, and by obtaining the aforesaid amount illegally and corruptly.

3. Shri A.D. Shah, learned counsel appearing for the appellant, has taken me through the versions of three main prosecution witnesses examined by the prosecution, whose versions

have been found reliable by the learned trial Judge i.e. PW-1-complainant, Ex.6; PW-2 Panch Witness Ex.24; and PW-4-Vinod Vyas, Investigating Officer and Police Inspector of Anti-Corruption Bureau (hereinafter referred to as 'the ACB'), Ex.35. Of course the learned trial Judge has also discussed the version of PW-3-Mayur A. Shah Ex.29. According to Shri A.D. Shah, the learned trial Judge has not considered the very important aspects and other facts relevant to such aspects at all which have come on record during the course of cross-examination of all the aforesaid four prosecution witnesses. The material contradictions have not been considered either important or relevant to the probabilities placed by the defence. In the same way, the conflict in the evidence of the complainant and the panch no.1 and the infirmities in the evidence to prove demand in a bribery case also have not been considered in its true and legal perspective. According to Shri A.D. Shah, the finding of guilt recorded by the learned trial Judge is based on erroneous and illegal

appreciation of evidence and, therefore, the judgment and order of conviction and sentence is not sustainable in the eye of law. While developing his arguments Shri Shah has also read over to the Court, the complaint Ex.8 and one other vital document i.e. panchnama Ex.25. In the present case, the appellant has examined one witness Mohamadbhai Kasambhai Mansuri as defence witness vide Ex.39 and he has proved and tendered one document in evidence at Ex.40 and according to Shri Shah, this document along with signatures on the document dated 16th June 1988 is important from various angles because the appellant is supposed to show the probability of his innocence. The material conflict in the evidence of the complainant and panch witness needs consideration because the prosecution, in a bribery case, is supposed to lead full proof evidence and our Courts have always expected the most transparent evidence in a bribery case. The prosecution was supposed to prove beyond reasonable doubt the initial demand of illegal gratification made by the appellant as the same has been pleaded

specifically with cogent and reliable evidence and so also the demand, if any made immediately prior to the acceptance of the bribe amount from the complainant. If it is the case of the prosecution that prior to or during acceptance of the bribe amount, the appellant has conversed with the complainant in any manner in presence of shadow witness i.e. panch no.1, the prosecution should bring such evidence and if the evidence of this part of story of the prosecution is found hazy or doubtful then the case as to the demand of illegal gratification should not be believed, is the trend of various decisions of this Court as well as the Apex Court. The prosecution is also supposed to prove the acceptance of the bribe amount and it also should prove that the amount tendered by the complainant to the appellant has been witnessed by the panch no.1, if pleaded specifically. The bribe amount was given against the demand or any consequences thereof; and the same was accepted as illegal gratification. It is settled legal position that mere acceptance of amount or mere recovery

of the muddamal amount from the appellant is not sufficient to link the appellant with the crime.

4. Of course, Shri A.D. Shah, learned counsel appearing for the appellant, has pressed into service one more point and has argued initially that the investigation by Police Inspector on 02nd September 1988 was illegal as the Police Inspector came to be authorized to investigate such cases under Section 7 of the Prevention of Corruption Act vide notification dated 10th January 1989. But in response to the query raised by the Court and as per the law that has taken shape in this regard, he has not pressed this point of his argument. However, it is submitted that the case of the prosecution is based on very weak and stray pieces of evidence. None of the parts of the evidence individually or all these various pieces of evidence collectively, are sufficient to link appellant with the crime. While reading the evidence of complainant PW-1 Ex.6, Shri A.D. Shah has drawn attention of the Court to

certain parts of oral evidence and it is submitted that the version of this witness is highly unnatural and unreliable, especially in the background of the documentary evidence available on record and so also the version of Shri Mayur Shah PW-3 Ex.29. The say of the prosecution is that the appellant being the Inspector of Food and Civil Supply Department, had neither given nor he was in a mood to give necessary permit for 30 bags of wheat and 10 bags of rice, unless his hands were greased, and under the pretend that in future also, the complainant may not have to suffer through proceedings that can be initiated against him by the Civil Supply Department, he should pay an amount of Rs.200/- per month to the appellant. The document Ex.31 dated 19th September 1989 is the document which proves that the permit for 30 bags of wheat and 10 bags of rice was already issued by the appellant on that very day. So the question of saying 'NO' to the complainant against his request to permit on 19th September 1988, ought not to have been believed by the learned trial

Judge. In the same way, on 21st September 1988, the complainant had requested to give permit for 30 bags of wheat and 10 bags of rice vide application Ex.32. The complainant had also requested to grant permit for three tins of pamolin oil and necessary orders were passed on 21st September 1988. Though it was not possible for the appellant to issue permit if the quota system is strictly adhered to, the request of the complainant was accepted and he was given transfer of quota from the quota allocated to other distributors for want of demand and necessary permit was granted. Therefore, when the permit as to the wheat and rice bags was ordered along with the transfer release of three pamolin oil tins on 21st September 1988, there was no scope for the appellant to say no to the complainant so far as his demand to issue permit is concerned. When the documentary evidence was sufficient to destroy the backbone of the story of the prosecution and when there is nothing on record to show that certain documents were found missing by the Investigating Officer, and they could not have

been procured and produced before the Court by the Investigating Officer, the learned trial Judge ought not to have accepted the oral evidence of the complainant that on 20th September 1988 any demand of bribe amount was made. As such there was no application on 20th September 1988 for permit in respect of wheat and rice, there was no reason for the appellant to refuse to issue permit against the demand made on 20th September 1988. Unless the prosecution proves that a specific application was made on 20th September 1988 and it was kept pending by the appellant and the complainant was asked to come down on the next day, the story of demand of illegal gratification ought not to have been accepted by the learned trial Judge. It is not the case of the prosecution that any bribe amount was demanded by the appellant on 19th September 1988. So a person who had approached the office of the appellant for necessary permit on 19th September 1988 and was granted the same on that very day without demanding any illegal gratification or monthly instalments, why the complainant should be

believed qua the story which he has placed before the Court as to the demand of amount of bribe on 20th or 21st September 1988.

5. It is the say of the complainant that as the appellant had said 'NO' against the demand to grant permit qua 30 bags of wheat and 10 bags of rice, the complainant had approached Shri C.V. Solanki, Zonal Officer at his residence. It is the case of the prosecution that the appellant being the Supply Inspector was holding the charge of Zonal Office as the said Shri C.V. Solanki was on leave. It is the say of the prosecution that because of the recommendation made by the said Shri C.V. Solanki, the appellant was compelled to issue permit. It is deposed by the complainant that Shri C.V. Solanki had telephonic conversation with the appellant and he had instructed and informed the appellant that the Government go-down was to remain closed for some days and, therefore, necessary permits should be issued promptly so as to avoid any inconvenience. This version of the complainant is contrary to the

documentary evidence Ex.32, which clearly reflects the release of wheat and rice bags along with three pamolin oil tins. Shri C.V. Solanki has not been examined by the prosecution. So on the aspect of so-called demand the evidence of the complainant is silent. When the document shows that on 21st September 1988, the application for permit was made i.e. after 19th September 1988, what had transpired between the appellant and the complainant on 21st September 1988? If the demand of bribe amount was made on 20th September 1988, then some conversation must have taken place on 21st September 1988 because according to the prosecution, the demand was for Rs.200/- and the said amount was to be paid per month. In the deposition before the Court, the complainant has not referred to that he was asked by the appellant to pay the amount of Rs.200/- per month. The evidence only refers to the appellant conveying that the complainant should understand the things and practice; and the complainant was threatened that his failure to pay the amount may result into cancellation

of licence and the complainant would have to close his shop. According to Shri A.D. Shah, learned counsel appearing for the appellant, the complainant had committed a number of lapses in running the said shop and therefore, his shop was raided and inspected by the officers of the Civil Supply Department. The appellant was an active participant in the inspection which was carried out by the Department in past and the complainant was facing certain proceedings before the Collectorate and thereafter the State Government. The conduct of the complainant, according to Shri A.D. Shah, is reflected from the document Exs.11 to 17. One document Ex.19 dated 22nd September 1988, states that the complainant was fined with an amount of Rs.250/- by the Food and Civil Supply Controller for the lapses which were found during the inspection carried out by the Department earlier. The complainant was served with the notice in the month of January 1988 and those proceedings had protracted upto 03rd August 1988. The complainant had admitted his

mistakes and the allegation as to certain irregularities noticed during inspection and, therefore, he was fined. Coincidently, the date of trap is also 22nd September 1988. Considering the background and mainly the document Exs.31 to 34, the conduct of the appellant improbablizes the theory of demand of illegal gratification and the complainant, therefore, ought not to have been believed qua the initial demand. It is not the case of the prosecution that when the demand was made initially or the so-called threat was given to the complainant, anybody else than the complainant was present; so the Court was supposed to evaluate the evidence of the complainant closely qua the initial demand. It is true that there is no need to lead any corroborative piece of evidence and the complainant can be believed if his version sounds truth. But when the documentary evidence cuts the basic theory as to the demand of bribe amount either on 20th September 1988 or 21st September 1988 and it is a question as to whether the version of a person who is having

some questionable background can be believed or not, then it was not safe for the learned trial Judge to believe that part of evidence of the complainant that on a given date i.e. on 20th September 1988, the appellant had demanded the amount of Rs.200/- and the complainant was asked to pay this amount per month. The consistency in the evidence of the prosecution is qua the amount only that the amount of Rs.200/- was demanded by the appellant, otherwise the rest of the parts of the story of prosecution, is surrounded by number of improbabilities and inconsistencies.

6. When it has come on record that one Nandkishor is the close relative of the complainant and he had purchased scooter from the appellant and the consideration was to be paid by Nandkishor to the appellant in instalments after paying the first basic amount and till the date of the trap, the entire amount of consideration towards the said scooter was not paid by the said Nandkishor. Of course, two documents have not been exhibited i.e. writing executed

initially for transfer of scooter and one marriage invitation card where the names of Nandkishor and the complainant are reflected as persons hosting marriage ceremony. This marriage invitation card shows that the marriage was arranged in the month of December and if really the relations were estranged and the appellant was harassing the complainant or the family of the complainant, then after the date of complaint and the trap, the appellant would not have received invitation card of the marriage in the family of the complainant and Nandkishor. These documents were shown to the complainant during the course of cross-examination. According to Shri A.D. Shah, learned counsel appearing for the appellant, the prosecution ought to have examined the said Nandkishor as witness considering the suggestions made to the complainant and the documents produced while recording evidence. In reality, the work of the complainant whereby he had prayed for permit was over but under apprehension of cancellation of licence on account of the search carried out by the

raiding party where the complainant was present, the complainant perhaps had developed inimical feelings. It is very likely that the work of the complainant on the relevant days may have been carried out by the appellant on recommendation of Shri Solanki who was on leave but this probability by itself cannot be considered as circumstantial evidence against the appellant to presume that he had agreed to do work of issuing permit on asking monthly instalment of Rs.200/-. When the case of prosecution, in the FIR, is that the amount of Rs.200/- was to be paid as the first instalment, neither the complainant nor panch has proved this case. Plain reading of the evidence creates an impression that the amount of Rs.200/- was demanded for a particular work and on a particular day i.e. 21st September 1989, and that too after intervention of Shri Solanki. As in those days it was not so easy or possible to get the print out from the Telephone Exchange for any local call, if dialed from a given number to a particular number. But according to Shri A.D. Shah, the

prosecution could have examined Shri Solanki to prove that the complainant had approached him making grievance against the approach of the appellant and after considering the grievance or complaint, Shri Solanki had telephoned the appellant who was in charge of office of Shri Solanki to issue permit because Shri Solanki was aware that the Government godowns were to remain close for some days and non-issuance of permit may create inconvenience to the licensee traders and in turn, public at large i.e. potential purchasers-card holders. For want of evidence of Shri Solanki, the learned trial Judge ought to have considered the variation found in the evidence of the complainant and the direct conflict between his oral version and the documents produced by the prosecution itself because they show different dates and different kinds of endorsements made while granting permit to the complainant.

7. Shri A.D.Shah, learned counsel appearing for the appellant, has drawn the attention of the Court to one material contradiction which was

pointed out to panch no.1, where this panch no.1-Ramniklal in his deposition Ex.24 has admitted that he has stated in his police statement of 22nd September 1988 (i.e. statement recorded immediately after the trap) that thereafter the appellant had told to sit for sometime and asked the complainant as to what has been done. The complainant in turn told, “Sir, everything is done/over, come out.” According to this witness, the complainant had requested the appellant to come out of his office saying that everything is over. Thereafter, the appellant had dialed one telephone number. This witness has also stated that after entering into the office of appellant about 10 to 12 minutes must have passed and thereafter, the appellant was raided. This witness has claimed that he had also come out of the office room of the appellant to the corridor along with the complainant and the appellant, and this witness claims that he was at a distance of about five feet from the appellant when the agreed signal was given by the complainant. When Police

Inspector Shri Vyas reached to the appellant, at that time the appellant was in the room where the clerks were sitting, and the ultraviolet lamp examination was carried out in that very room, meaning thereby, the staff room only. At that time, three to four persons were there who were staff members and they were also asked not to move from their respective seats.

8. According to Shri A.D. Shah, the version of this witness i.e. panch no.1 in paragraph no.8 of his deposition is inconsistent to the story told by this very witness in the examination-in-chief. In examination-in-chief this panch no.1 has said that when he and the complainant entered into the office of the appellant, the appellant was talking on telephone and when the complainant had told that they had come, the appellant had asked them to sit. At that time, the appellant had asked as to who the appellant was ? and at that time panch no.1 had replied that he was coming from outstation and he wanted to get ration card issued in his name.

At that time, the complainant had told the appellant that as per the talk he had brought and in reply thereafter, the appellant had said that he would come after finishing his talk. Therefore, the complainant had said that he was in hurry. Thereafter, the complainant, he (panch no.1) and the appellant came out in the corridor. The appellant asked the complainant that if he had brought, then give. Thereafter, the complainant had taken out the muddamal currency notes to the tune of Rs.200/- kept in his pocket and handed over the same to the appellant and the appellant had accepted the said amount with his left hand and had put the same in his left-side pocket. Thereafter, the agreed signal was given and the ACB personnel reached. The Police Inspector had reached first. According to Shri A.D. Shah, learned counsel appearing for the appellant, it is not clear from the evidence that actually where the amount was demanded and the muddamal currency notes were given. Whether it was the room where the the appellant was sitting or the gallery where all the three persons had come out and

had some talk with one another or the staff room where the appellant was asked to sit and was directed not to move. According to Shri A.D. Shah, the prosecution has also not satisfactorily replied as to why the panch no.1 had not acted as per the instructions given to him while drawing the first part of panchnama. The panch no.1 was to be introduced in a different way as per the panchnama. However, for the reasons best known to the panch no.1 and the complainant, the panch no.1 was introduced as a stranger and a person visiting the office to get a new ration card and had posed himself to be an outsider and a stranger. It is possible to infer that when the telephonic talk of the appellant was going on, the complainant and panch no.1 were requested and made to sit then why the appellant could have ignored his activity of following the complainant and the appellant, though the outsider i.e. panch no.1 had no reason to come out with both of them in the gallery. If the panch no.1 was a stranger, whether the appellant would have asked for illegal

gratification/ bribe amount in his presence, was a question which was required to be addressed by the learned trial Judge in a logical way because this version of panch is not consistent to the first and second part of panchnama. In some cases, this Court as well as the Apex Court has viewed the case of the prosecution with doubt where the say of the prosecution was that the appellant accepted the amount of illegal gratification in presence of a stranger. There was no instruction to the complainant to ask or request the appellant to come out of his office i.e. his working table, then why the complainant was intending to avoid presence of panch no.1 or to avoid expected reply from the appellant about clearance of his demand to issue permit? This should be considered by this Court.

9. One more point argued by Shri A.D. Shah is that there is ambiguity in the case of prosecution about the place where the muddamal currency notes were lying at the time when ACB Police Inspector entered into the room; especially

when the ultraviolet lamp examination was carried out on the muddamal currency notes. It appears that Nandkishor had played some role with the complainant so that the appellant can be trapped and the appellant as well as the higher officers of the department can be placed under pressure to achieve willful result in the pending departmental proceedings which were going on against the complainant. Nandkishor might have joined hands with the complainant so he also can get advantage by not paying the remaining amount of consideration of the scooter purchased by him from the appellant. The signature proved at Ex.21 is enough to establish that on the date of trap, the said Nandkishor was indebted to the appellant. The theory of the appellant is that one Mukeshkumar Damodar, brother of Nandkishor, was serving in the shop of the complainant upto about March 1990. Ex.20 is the complaint filed by the complainant and the present case against the said Mukeshkumar Damodar and Puran Damodar, who are brothers of Nandkishor, indicates that Mukesh Damodar was in service of complainant

upto 21st March 1990. But as Mukeshkumar had misappropriated some cash amount and had done some mal-practice, the complainant was compelled to file a private complaint the said Mukeshkumar and Puran. So on the date of trap, there was no conflict of interest between Nandkishor and the complainant. As the brother of Nandkishor was serving in the shop of the complainant, it is pleaded by defence side that the complainant had assured the appellant that the remaining amount of consideration towards the scooter sold to Nandkishor shall be realized and if need be, he personally would see that the amount of consideration is realized by the appellant. Normally in ACB cases, the Trapping Officer makes the detailed inquiry before laying down a trap as to whether the complainant or his close relative had any financial transactions with the accused named in the complaint or not. In the present case, it appears that no such inquiry either was made or the Trapping Officer had attempted to keep a curtain on this aspect. The prosecution is supposed to establish beyond reasonable doubt

that the amount was demanded as illegal gratification or bribe money. It also should be proved that the muddamal currency notes were given by the complainant under the agreement and the same were accepted with a clear understanding by the appellant that he is accepting the illegal gratification or bribe. In the present case, the deviation found in the evidence led by the prosecution, makes the prosecution case doubtful because all these three crucial aspects are found under a great shadow of doubt. Even for the sake of argument, if it is accepted that the muddamal currency notes were in the pocket of the appellant and the same were taken out in presence of panchas and thereafter, the currency notes were kept on the table, then also it is very likely that the complainant might have made part payment of the amount of consideration of scooter sold to his brother's son Nandkishor. It is in evidence that one cheque given by Nandkishor towards the amount of consideration to the appellant had been dishonoured and thereafter, it was agreed that the amount shall be paid regularly in

instalments so that he can avoid other serious legal proceedings. The signature on the cheque of Rs.5000/- is an admitted document i.e. Ex.21. It appears that in Ex.21 both the signatures are given, one on the cheque dated 19th March 1989 and another on the letter dated 20th March 1989. It is argued by Shri A.D. Shah that the complainant or Nandkishor both jointly or one of them was under obligation to pay Rs.500/- to the complainant as agreed instalment amount and as the currency notes given by the complainant were to the tune of Rs.200/-, the same amount was taken out by the appellant himself and it was put on the table saying that he would accept Rs.500/- and not Rs.200/- and, therefore, the currency notes were lying on the table at the time when the ultraviolet lamp examination was carried out by Police Inspector. It is true that the panch no.1 has not stated so in his deposition that the currency notes were taken out from the pocket of the appellant himself. Ultimately, the panch no.1 was the Government employee and under pressure he might have agreed to depose

this crucial part of second part of panchnama. It is observed by this Court as well as Apex Court in number of cases that the Government employees examined as panch witnesses have tendency to tilt in favour of the prosecution. Though the panch witness is not the trap witness, while evaluating his independence and trustworthiness, the Court should look to the total evidence led by such a Government employee.

10. According to Shri A.D. Shah, certain circumstances on record establish one fact clearly that the complainant was inimical to the appellant being a key member to the raid which was carried out by the Civil Supply Department and for that the complainant was served with a notice and a fine of Rs.250/- was also imposed by the Department. As mentioned earlier, the date of order passed by the higher officer imposing fine is also of 22nd September 1988.

11. There is conflict in the evidence as to the

place where the ultraviolet lamp examination was carried out even amongst two important witnesses i.e. complainant and the panch no.1. PW-3 Mayur Amrutlal Shah examined vide Ex.29, states that ultraviolet lamp examination was carried out in the staff room where they were sitting. However, he has stated that when they were working in their room, there was hubbub and they learnt that the appellant is caught and the ACB people had entered into the room where the Zonal Officer and Inspector were sitting. This prosecution witness who is also a Government employee and who has been examined as an independent third person present, has stated that the complainant and Nandkishor were visiting their office. Nandkishor is also having a fair price shop and both were coming to office by taking applications of each other. This prosecution witness has also admitted that he had seen the scooter of appellant with Nandkishor prior to three months from the date of incident. He has stated that he is not sure whether the second part of panchnama was drawn and no amount has been recovered from the

appellant, when he was in the staff room where they were sitting. This prosecution witness has proved the documents at Exs.31 to 34 and none of these documents reveals that any application was made on 20th September 1988 for any type of problem by the complainant. This prosecution witness has not stated even in his evidence that on 20th September 1988, the complainant had even visited his office. So the version of the complainant in the complaint is a false version. It appears that the complainant had created a story of 20th September 1989 and also about his visit. When the instructions given to the panch and complainant were qualified instructions, the tendency to act differently should be viewed with doubt, is also one of the arguments advanced by Shri A.D. Shah because it is possible to gather the ill-intention or ill-will that may be there in the mind of the complainant and/or the panch no.1. There is no reference in the deposition either of the panch no.1 or the complainant, specifically as to the qualified instructions which were given to them. The permit dated 29th September 1988 was

given prior to the raid carried out on 22nd September 1988, otherwise the document found and ultimately seized by the Trapping Officer would not have been there with endorsement made by the appellant on 29th September 1988. It was not possible for the appellant to put post time or post dated endorsement because the documents were taken by the Trapping Officer on 22nd September 1988 itself, immediately after the raid in question.

12. It is also one of the arguments advanced by Shri A.D. Shah, learned counsel appearing for the appellant, that if the currency notes were found even for a second on the table, it is the question which could have been replied by Trapping Officer as to whose table it was and why the ultraviolet lamp examination was not carried out on the said table. When the theory of pushing the complainant back with a view to extort money by saying the words “come tomorrow” is found false from the documentary evidence led by the prosecution itself, this Court should not ignore the smallest material

conflict or inconsistency while appreciating the quality of evidence. The case of one of the prosecution witnesses is that the bribe amount was in the left side pocket of the appellant. The Police Inspector Shri Vyas has stated that it was in the right side pocket of the appellant. Whether the muddamal currency notes were kept initially at the time of drawing first part of panchnama in the pocket of payjama (trouser) or Zabhbha (long shirt) of the complainant, is also not clear. The version of the panch no.1 is that the amount was kept in the pocket of Zabhbha. The Investigating Officer has stated that the amount was kept in trouser. The panchnama states that the same was kept in the pocket of 'lengha'(trouser), other word used for 'payjama'(trouser). However, the panch no.1 has stated in his deposition that it was kept in the pocket of Zabhbha. The ultraviolet lamp examination was carried out on the trouser of the complainant and no examination was carried out on the Zabhbha of the complainant. In view of the evidence of the panch no.1 before the Court, it is possible

that the anthracene powder marks might have been seen at both the places i.e. on trouser as well as on Zabhbha. This indicates the possibility of shifting of muddamal currency notes from pocket of the trouser to the pocket of Zabhbha after completion of the first part of panchnama. The learned Public Prosecutor conducting the trial has neither drawn the attention of the panch no.1 to the relevant part of panchnama, nor he has been confronted by putting leading question with the permission of the Court. The conflict on this part of evidence that has remained on record also will have some impact because there is no consistency in the evidence of the prosecution witnesses as to who put the currency notes in the pocket of the complainant. Whether the currency notes were kept in the pocket of the complainant himself or one of the members of the raiding party namely Bhalchandra as mentioned in the first part of panchnama or it was the third person from the raiding party personnel. According to panch, after accepting the amount the appellant went to the staff

room. Now the question is which is the first room. The evidence indicates that from the room where Shri Solanki and the appellant were sitting one can go to the room where staff members sit. Whether the staff room was the first room or the room of appellant and Shri Solanki was the first room, is not clear if the oral evidence led is appreciated as it is. When it is in evidence that others were asked to sit silently, it is inferable that it must be the staff room. It is nobody's case that in the room where Shri Solanki and appellant were sitting, any other member of the staff was also given space to sit. Thus, there is inconsistency in the evidence as to the place where the appellant was intercepted and was asked to sit and not to move by Trapping Officer where the ultraviolet lamp examination was carried out. This inconsistency, according to Shri A.D.Shah, cannot be said to be minor discrepancy. The appellant challenges the entire process of trap arranged against him.

13. The another argument of Shri A.D. Shah, learned

counsel appearing for the appellant, is that in most of the cases, to prove the demand immediately prior to acceptance of bribe amount, the prosecution relies on the conversation that takes place between the bribe giver and the bribe acceptor. If such an attempt is made by the prosecution in a bribery case, then the prosecution should lead evidence which can be ultimately looked consistent at the time of evaluating the evidence of the complainant and the shadow panch, or any other witness who claims to have heard such conversation. In the present case, the talk between the appellant and the complainant is totally silent on the aspect of harassment and it does not refer to the element of 'Hapta' (instalment). The instructions given by the Trapping Officer to the complainant and the panch no.1 were clear and qualified, if the panchnama is read because the case of the prosecution is that the amount of Rs.200/- was demanded under a threat of harassment as regular monthly instalment. The first part of panchnama Ex.25 states that, the Police

Inspector Shri Vyas instructed the complainant, *"Till occasion giving bribe arises, he should not touch the muddamal currency notes... and on meeting Shri N.C. Bhatt, In-charge Zonal Officer (appellant herein), he should initiate the talk about not to harass him in getting the permit for his fair price shop and also to ask Shri Bhatt that he has brought, as per his demand, the instalment of Rs.200/- and if Shri Bhatt so demands only then he should give the bribe amount to him and on acceptance, the agreed signal should be given after coming out of the office."* Neither the panch no.1 nor complainant has stated specifically that any talk about harassment or permit had taken place between the appellant and the complainant. It is neither the case of the complainant that he had initiated the talk as per the instructions nor the prosecution that the appellant had initiated the talk about such permit or 'Hapta' or any type of special convenience which he was thinking to make for the complainant.

14. The raid was carried out on 22nd September 1988

and as mentioned earlier, the permits were already signed and prepared and, therefore, the Investigating Agency was able to seize those documents from the office of the appellant. If the appellant had kept any work pending till he received the so-called 'Hapta', then document i.e. permit, etc. would not have been lying ready with the subordinate staff member from whom the said document was seized by the Trapping Officer. This indicates that there was no intention of extorting money and that was not the practice followed by the Officer issuing permit. Whomsoever he may, he may be appellant or Shri Solanki or anybody in-charge, there is no evidence to show that these permits were kept ready because of the pressure from Shri Solanki, Zonal Officer, who was on leave. When it is in evidence that the complainant was the key member of the earlier raid and the department was contemplating steps against the complainant, this Court should infer that the complainant was inimical to the appellant and to bring the pressure on the Civil Supply Department, so that the department might act

smoothly against him or at least his licence of fair price shop is not cancelled for the irregularities which were found during the earlier checking/ supervision, he had created the story. It is further submitted that this Court should consider the effect of order passed below application Ex.28 as well as the version of the defence witness examined vide Ex.39. Ex.40 has been proved by this witness. Ex.28 was the application filed by the defence counsel whereby the appellant had prayed that the document at Mark B received in evidence may be exhibited. The learned Special Judge ultimately has accepted the application and in paragraph no.5 of the judgment has observed, “since the document in question has been proved by witness Ex.39, this application automatically stands disposed of. So the document Ex.40, therefore, can be said to be a document proved by the defenceside. The Defence Witness-1 Mohamadbhai Kasambhai Mansuri, aged about 62 years, in his deposition Ex.39, has stated that Nandkishor is the first cousin (uncle's son) of the complainant and this

Nandkishor was using the scooter of the appellant. This witness was also running a fair price shop at the relevant point of time prior to 15 to 20 years. Nandkishor was also running the fair price shop in the name of “Rakesh Consumers”. This Nandkishor was using the scooter of the appellant for the last 3 to 4 months prior to the date of incident. He has stated that the appellant had been to his shop and had requested him to help him in realizing money of sale of scooter because he was the person who had signed the document on 16th June 1988. This witness was examined by defenceside as he was competent to prove writing executed between the appellant and Nandkishor. This witness has stated that the said scooter was sold for Rs.6000/- and the amount of Rs.1000/- was paid in advance and the remaining amount was to be paid in monthly instalments of Rs.500/- and Nandkishor had paid the amount of Rs.1000/- in presence of this Defence Witness. This witness proved the signature of Nandkishor on cheque produced at Ex.21 and also the writing Ex.40. According to Shri A.D. Shah, the

learned trial Judge has failed in appreciating the evidence of this witness. The evidence of this witness was required to be evaluated in the background of the explanation given by the accused under Section 313 of the Code of Criminal Procedure, 1973 and the response given by the accused to the questions asked by the Court during his examination. It is settled that the appellant is entitled to rebut the presumption and the presumption can legally be rebutted by showing only probabilities and the judgment under challenge does not deal with this contingency which can be said to be legal or logical. Why this defence witness should not be believed, was the question before the learned trial Judge. This witness has been cross-examined in detail by the learned Public Prosecutor and it was suggested to this witness that this document Ex.40 is a concocted document and the signatures have been obtained prior to about 20 days. But the version of this witness at least could have been appreciated well by the learned trial Judge in the background of the date of submission of

application Ex.28 and the date of the cheque Ex.21, which was dishonoured. It was not possible for the appellant to concoct or create a cheque with the endorsement of a bank. It was not impossible to disprove such concoction. This witness has fairly admitted that the Zonal Office has made complaints against him on many occasions and he has been fined also. He has agreed that his relations with the Zonal Office should be cordial but he has also stated that he was seeking help of Nandkishor in his dealings with the Zonal Office i.e. office of the appellant. This fact has come on record during the course of cross-examination of the defence witness. The attempt to obtain signature of this witness was also made. The witness was asked to sign on a blank paper by the Court and there is no positive finding in the judgment that the Court is not satisfied with the apparent similarities in the signature on document Ex.40 and the signature made by the witness in the witness-box. It is submitted that the amount allegedly accepted by the appellant may be the bribe amount but it may

not be a bribe amount or an illegal gratification. When it comes to 'may be' or 'may not be', the learned trial Judge ought not to have presumed in favour of the prosecution. Why the learned trial Judge has not discarded the story placed by the prosecution in the background of the evidence qua the permit Ex.31 issued on 19th September 1988. It is clear that on 19th September 1988, the permit was sought for and it was granted on the very same day. For short, Shri A.D. Shah, learned counsel appearing for the appellant, states that this is a case where the appellant could have been acquitted by the learned trial Judge observing that he has been trapped falsely or at least he ought to have been given benefit of doubt considering the probable story of defence placed and proved.

15. Shri A.J. Desai, learned Additional Public Prosecutor appearing for the respondent-State, states that the prosecution has satisfactorily bring home the charge. There was no reason for the learned trial Judge to discard the evidence

of the complainant who has proved the demand of illegal gratification and the acceptance of the bribe amount. There was also no reason for the panch no.1 to implicate the appellant falsely. The learned trial Judge has considered the defence plea and there was no reason for the learned trial Judge to observe that the appellant might have accepted the amount against the consideration of sale of scooter earlier because the so-called instalment was required to be paid by Nandkishor and not by the complainant. Shri A.J. Desai, learned Additional Public Prosecutor, has stated that as the instalment allegedly was of Rs.500/-, the appellant would not have accepted the amount of Rs.200/-. The documents at Exs.30 to 34 clearly corroborate the say of the complainant. So this is a case where the Court can safely rely on the oral evidence of the complainant. The complainant gets direct corroboration from the documents at Exs.30 to 34. The said documents prove that the complainant himself was dealing with the management of his fair price shop and the

appellant had attempted to exploit the situation as he was in-charge of the office as Shri Solanki was on leave. It is the experience of the society that when a subordinate is asked to be in-charge of the office of the Head of the office, such officer tries to exploit the situation. It also gives scope or chance to raise demand, reasonable or unreasonable. In the present case, the appellant had demanded the amount of Rs.200/- under a solace that if the amount is paid, he may not be harassed in future; meaning thereby, if the amount is not paid, he may be harassed. The appellant had experience of the departmental officials and he was subjected to inquiry which was pending on the date of trap. The pendency of one proceeding against the appellant is a situation which helps the prosecution. The appellant may have asked the bribe amount. So under the fear of any proceeding which was pending earlier, may create some trouble for the appellant. It is in evidence that Shri Solanki was the Zonal Officer and he was on leave. The appellant was not to remain in office for long. So the

question of asking monthly instalment was remote. It appears from the evidence of the complainant as well as panch no.1 that as the appellant was in office for some days, there was no discussion of paying regular instalments at the time of conversation which had taken place between the complainant and the appellant. The panch no.1 categorically stated in his deposition that the appellant had accepted the bribe amount from the complainant. He has stated, *"the complainant told Shri Bhatt (appellant herein) that as per the talk he has brought and Shri Bhatt in turn said that let me talk on phone thereafter he would come. The complainant, therefore, had said that he was in hurry and, therefore, Shri Bhatt had come out with the complainant; and complainant and Shri Bhatt came out in the gallery."* According to Shri A.J. Desai, the words uttered by the appellant in the gallery as stated by the panch no.1, is the crucial evidence against the appellant. It is stated by the panch no.1, *"the appellant told the complainant that if he has brought then give"*. Thereafter, the complainant

took out the bribe amount of Rs.200/- from the right side pocket and gave it to the appellant. The appellant had accepted the same with right hand and with the help of left hand put the same in his pocket. He had placed the amount in his left side pocket. So the words uttered by the appellant immediately prior to acceptance of the amount indicate that the amount was accepted under an agreement or at least some understanding and the learned trial Judge has rightly observed that there is no reason to disbelieve the panch witness on this aspect. There is consistency in the evidence of the complainant as well as panch witness qua the demand made immediately prior to its acceptance. There is no material contradiction in the nature of omission.

16. Shri A.J. Desai, learned Additional Public Prosecutor, has further argued that the learned trial Judge has appreciated the sequence of events. Non-disclosure of event of 19th September 1988 was not required to be made by the prosecution at all. The order of 29th

September 1988 made by the appellant was because of a telephonic instructions given by Shri Solanki. The conduct of the appellant is guilty. The theory of defence placed by the appellant does not pose him to be an honest and upright Government employee. On the contrary, he admits that he had entered into prohibited transaction, as per the norms settled by the Government in selling his scooter to a person with whom he had official communication frequently. This Court, on the contrary, should observe while confirming the conviction that the Government ought to have initiated departmental proceedings against the appellant on the strength of the admissions made by him qua the transaction of sale of scooter with a fair price shop dealer namely Nandkishor. There was no reason for the complainant to give amount of Rs.200/- to the appellant. As the complainant was facing one proceeding, he was asked to part with money i.e. an amount of Rs.200/-, so there was reason for the complainant to agree with the demand made by the appellant. The complainant does not look

like an accomplice. On the contrary, he must be a victim of situation created by the appellant. The conversation between the appellant and the complainant which had taken place on previous occasions have been narrated by the witnesses and nothing fruitful has come during the course of cross-examination. A witness who is deposing before the Court after several years is bound to commit some minor mistakes. The Court should look to the overall aspects. The deposition should be read as a whole, is the law and it is not legally necessary to reproduce the conversation verbatim either by the complainant or by the panch witness; and both these witnesses may not reproduce the similar words or sequence. The Court should look to the type of conversation and its essence. According to Shri Desai, on number of occasions, the conversation may not take place when both such persons are knowing and aware about the agreed transaction and so also the reasons for giving and taking bribe, no evidence comes on record qua conversation. So in the present case, the conversation which had taken place was limited.

The act of appellant of coming out in the gallery from his room on the direction given by a fair price shop dealer suggests a guilty conduct. It is true that the panch no.1 was to be introduced as a relative, even then he was introduced himself as an unknown person. But that itself would not make the say of the panch no.1 infirm. The act of complainant asking the appellant to come out of the room and the subsequent behaviour of the appellant of coming out of his room indicate some understanding or agreement between them and this part of evidence corroborates the version of the complainant qua the initial demand made by the appellant. Shri A.J. Desai, learned Additional Public Prosecutor, has taken me through the relevant evidence which is there on page nos.199 to 201 of the paper-book. It is true that the statement of the appellant is inadmissible and, therefore, while reading the evidence which is at page nos.201 to 203, this Court should ignore the inadmissible part of evidence. The Trapping Officer ought to have asked the questions to the panch no.1 which

were asked to the appellant, but it does not make the exercise of recovery of muddamal currency notes from the appellant bad. The learned trial Judge has rightly observed that the amount was recovered from the pocket of the appellant and it was not lying on the table. When it has been proved by three witnesses namely the complainant, panch no.1 as well as the Trapping Officer, that the anthracene powder marks were seen on both the hands of the appellant and when the learned trial Judge was satisfied that as no good explanation is coming forth from the appellant, it was possible for the learned trial Judge to conclude that the acceptance of muddamal currency notes has been proved satisfactorily. When the appellant has examined the so-called witness of Ex.40, why Nandkishor has not been examined. It was not possible for the prosecution to examine Nandkishor and there was no need even to record his statement because the real brother of Nandkishor was serving with the complainant and the relations had become tight but on the date of trap, the relations were cordial between the

appellant and Mukesh-brother of Nandkishor. The learned trial Judge has assigned good sound reasons before arriving at a finding of conviction in paragraph nos.8 to 11 of the judgment. It is submitted that this Court should consider the reasons assigned by the learned trial Judge and observe that they are good sound reasons and there is no element of either perversity or illegality. The learned trial Judge has rightly observed that the complainant has denied that the amount of Rs.200/- was given against the demand of Rs.500/-, then the defence theory of false implication is not found acceptable. Shri Solanki was not required to be examined and one of the staff members examined from whom the documents were seized, has tried to oblige the appellant while responding to the questions asked in the cross-examination by the defence counsel but ultimately this witness was examined as a formal witness. He is not the trap witness and it is not the case of the prosecution that the appellant was intercepted in presence of this witness namely Mayur

Amrutlal Shah at Ex.29. This witness does not carry the defence case any further. The learned trial Judge has rightly raised the presumption against the appellant and no error has been committed by the learned trial Judge in observing that the appellant has failed in rebutting the presumption. The learned trial Judge has given exhibit only to the signature on the said document Mark “B” and the contents of the said document Mark “B”, therefore, cannot be read. In a bribery case, the accused can create any evidence. In the present case, it was easy for the appellant to create such evidence because the relations among Nandkishor, Mukeshkumar and appellant were cordial at the relevant time of trap.

17. Shri A.J. Desai, learned Additional Public Prosecutor, has drawn the attention of this Court to certain portion of the judgment under challenge, especially paragraph nos.8 to 11, however, the same are not reproduced hereinbelow for the sake of brevity. Paragraph no.8 of the judgment is comparatively a very

lengthy paragraph which practically discusses the evidence of the complainant and panch no.1 examined, simultaneously dealing with the decisions cited before the learned trial Judge. Plain reading of paragraph no.8, of course, gives an impression that the arguments advanced by learned defence counsel were extreme. The enthusiasm of the learned defence counsel appears to be an attempt to hammer that the appellant has been implicated falsely in the offence in question. The learned trial Judge has rightly observed that it is not possible for the Court to say that the panch no.1 had never entered the office; otherwise the learned trial Judge would not have mentioned in the judgment that Mr.Desai for the appellant wanted him to hold that the panch no.1 should be held not to have even gone to that place at all, meaning thereby, the office of the appellant. But it is clear that the learned trial Judge has not appreciated the evidence keeping in mind the basic case placed by the prosecution which is reflected in the earlier part of discussion made in paragraph no.8 of

the judgment under challenge. When the reliability of the witnesses examined by the prosecution needs corroboration from the other evidence, then it is the duty of the prosecution to examine such witness or witnesses. True it is that uncorroborated testimony of the complainant also can be accepted by the Court. But here the conduct of the complainant does not appear to be a conduct of an honest and transparent citizen approaching the Anti-Corruption Bureau (ACB) with a grievance against the public servant. In the same way, the inconsistency created by the complainant and the conflict in the oral evidence of the complainant with the documentary evidence collected by the prosecution has created a situation under which the prosecution should have examined at least Shri Solanki and some investigation also was required to be carried out in reference to the sale transaction of a scooter of the appellant and a close relative of the complainant. This is a case where there was a scope for the Investigating Officer to enter into details of

proceedings pending against the complainant in the Civil Supply Department. After completion of the raid, certain details could have been asked to the complainant and the Investigating Officer should have recorded further statement to explain the same.

18. In the same way, the evidence of panch no.1 clearly reveals that for the reasons best known to him, he has not acted scrupulously the instructions given to him by the Trapping Officer. After all his assistance was sought as a responsible citizen being a Government employee. There was no reason for him to act contrary to the instructions given to him by the Trapping Officer. Whether he has deposed before the Court to help the appellant by making some deviations or he had stated something at the time of drawing second part of panchnama which was convenient to the Trapping Officer under pressure and had stated the true facts before the Court, are the questions which posed two equal probabilities. The Court is not supposed to draw any inference as to which

probability is more likely. But it is possible for the Court to say that there is no consistency in the basic version of the panch no.1 in his statement, the panchnama and deposition given before the Court. Why the appellant accepted the proposal to come out of his office at the instance of the complainant, is also a question. This conduct of the appellant appears to be the conduct of a guilty person at first sight. The public servant should not obey such instructions while in office. But ultimately when it has come on record that the appellant had some personal topic to discuss i.e. on the subject of non-payment of amount of consideration of sale of scooter of the appellant, he may have responded positively to the suggestions made to him by the complainant to come out from his office in the gallery. So it would not be safe for this Court to observe that the conduct of the appellant accepting the proposal is a conduct of a guilty person or this behaviour of the appellant should be construed to be a conduct of a person having some previous agreement

regarding acceptance of the illegal gratification. There was no reason for the complainant to ask the appellant to come out of his office. Whether he intended to avoid the presence of panch no.1 who was all the way with him as shadow and sitting in the office or whether the act of panch no.1 introducing him in a different manner to the appellant had created any suspicion in the mind of the complainant, and therefore, he called the appellant outside his office, or whether the appellant would have accepted any amount in presence of an unknown person who had been to his office as an applicant to get his ration card issued, are the fact situations which are capable of creating some shadow of doubt individually and collectively. The learned trial Judge ought to have considered that if possible, the prosecution should lead the best available evidence and in the same way, the Investigating Agency is also supposed to behave in the most transparent manner and it shall try to collect the evidence objectively before filing final report in the Court. On plain

reading of the papers collected during the course of trial and that too in couple of hours, if the same are found inconsistent to the story unfolded by the complainant, then the duty of the Investigating Officer in such situation is that he should collect evidence which can resolve or explain this contingency. The prosecution has come out with a specific case that the appellant has by abusing his position as In-charge Zonal Officer, demanded illegal gratification of Rs.200/- as monthly instalment from the complainant, so that the appellant may not harass the complainant in future and for issuing permit to him releasing the quota of rice and wheat to be sold to general public through his fair price shop. This demand was made on 21st September 1988 and ultimately the appellant accepted the amount on 22nd September 1988. The complainant had approached the appellant who at that time also was in-charge of Zonal Office of Civil Supply Department, Gomtipur, Ahmedabad, as Shri Solanki was on leave and on that day the appellant had refused to give the complainant

requisite permit for release of quota of rice and wheat. The question posed before the Court is that on 20th September 1988, whether any request to release the quota of the complainant was pending in the office of the appellant or the complainant had approached with such written request on 20th September 1988, was required to be investigated because the papers recovered and produced by the prosecution reveal that as such no written request was made by the complainant on 20th September 1988. Earlier applications were already granted and the permits were issued. It is not the say of the complainant that the permits issued were not being handed over to the complainant awaiting for illegal gratification; otherwise such permits could have been seized by the Investigating Officer. It is alleged that on 21st September 1988, the complainant had approached the appellant again because it is the say of the prosecution that on 20th September 1988, the request made in writing to issue permit was turned down or was kept pending and keeping the application, if, made

on 20th September 1988 pending, the complainant was asked to come on the next day. On 21st September 1988, the request was made and the appellant refused to issue any permit. Now the document shows that on 21st September 1988, the permit was issued. One more favour was also shown, keeping in mind the public demand, of transferring the quota from one another fair price shop licence dealer so far as three tins of edible oil are concerned. It would be risky to draw any presumption against the appellant saying that he must have granted these permits after telephonic instructions from Shri Solanki because it is equally possible that he might have accepted the request on his own. There is no cogent or convincing evidence on record that what was the response of Shri Solanki after telephonic conversation between Shri Solanki and the appellant. If the appellant would have responded positively to Shri Solanki being his senior, then Shri Solanki could have said to the complainant that his request to issue permit was being sanctioned and he should collect the permit at the earliest. Whether the

complainant had ever expressed the grievance that the In-charge, Zonal Officer was demanding the bribe of Rs.200/- and that too by way of a monthly instalment, is a question which has remained unanswered for want of clear evidence of the complainant in this regard and non-examination of Shri Solanki. Now the trap was arranged on 22nd September 1988 and on that day, the Investigating Officer had recovered the documents which show that the request made on 21st September 1988 was not even kept pending and it was sanctioned on the very same day, and the papers had already reached to the table of subordinate clerks, otherwise the same would not have been collected from the clerical staff. It is not the say of the prosecution that these papers were lying in the drawer or physical custody of the appellant. Undisputedly, the sitting arrangement of the appellant and the staff members is different. So the learned trial Judge has jumped to an inference that the version of the complainant is transparent. Unless the pressure brought by him, no permit would have been granted by the

appellant. On the contrary, the documents collected show the endorsement of permit granted on 21st September 1988, which affect adversely to the case of the complainant in absence of version of Shri Solanki. It is true that the prosecution is not supposed to examine each witness cited but a material witness who is required to be examined, should be examined, and when a witness is not to lead evidence which can be said to be duplication in nature and such witness is competent to state certain additional relevant facts, then non-examination of such witnesses by prosecution makes the prosecution case infirm. Even the appellant can argue that the prosecution has remained unfair to him. It is always open for the prosecution to restrict the number of witnesses and can close its evidence after examining one or two witnesses in certain cases like ACB cases, provided that the prosecution is capable of saying that the evidence of witnesses examined is sufficient to bring home the charge. Here the finding of the learned trial Judge is that the oral evidence of the complainant and the

panch no.1, if read collectively, is sufficient to bring home the charge, and the version of panch no.1 is straight forward. But in view of aforesaid discussion, it is difficult for this Court to express agreement with this finding because there are certain material inconsistencies in the evidence of the complainant as well as panch no.1 and also in the deposition of panch no.1 and panchnama, and also in the version of the panch no.1 and the version of other witnesses examined by the prosecution, including one of the staff members of the office of the appellant namely Mayur. It is relevant to note that this witness Mayur has not been declared hostile. There is even conflict in the evidence as to where the muddamal currency notes were kept by the complainant. Whether it was the pocket of trouser or Zabhbha of the complainant or whether the appellant was intercepted when he was in the gallery itself or when he was in his chamber or when he was in his chair in the room where the Zonal Officer seats or other room where the staff members sit. There is clear

conflict in evidence between the panch no.1 and the Trapping Officer. The panch no.1 has also not explained as to why he has not obeyed the instructions given to him by the Trapping Officer. He was the best person who could have explained this situation. None of the members of the raiding party, including the panch no.2 perhaps had claimed when they were standing in the vicinity of the room where the appellant was sitting, wherein the complainant as well as panch no.1 had entered, that they can visualize the physical gestures, otherwise such witnesses could have been examined. As per the second part of panchnama, the raiding party had reached near the office of the appellant at about 13-40 hrs. The vehicle was stopped on cross roads near Shantinagar Society. The panch no.1 and the complainant reached the Zonal Office situated on second floor. The panch no.2 and the members of the raiding party had followed them; they scattered and took their position so that nobody can suspect their movement. Thereafter, the panch no.1 and the complainant had entered into the second room

situated on the western side of the first room and the complainant had asked as to where is the appellant and at that time, he was told that the appellant is sitting on the table of Shri Solanki. Thereafter, both of them came in the first room and at that time the appellant was talking on phone facing south and on seeing the complainant, he had instructed to wait and after putting the receiver down, asked the complainant to sit. The panch no.1 had occupied the sit on a bench which was kept in the very room and the appellant had asked the panch no.1 as to who he was. At that time, the panch no.1 had introduced himself as an outsider and said that he had come to get the card (ration card) issued in his name. In response thereof, the appellant had told the panch no.1 to sit for sometime and had asked the complainant as to what he had done. In reply thereof, the complainant had told, "S*ir everything has been done, come out.*" At that time, the appellant had told, "*I shall do one telephone call and thereafter we can talk*." On completion of the telephone call, the complainant had said that

he is getting late and, therefore, the appellant had agreed to go out. The panch no.1 had followed both of them and the panch had reached upto the door of balcony. Here it is pertinent to note that some witnesses have described some of the portion as “balcony”, some witnesses have said “gallery” and some have said as “lobby”. Whether all these areas are different or the same have been addressed differently by these witnesses, which has created some confusion and this confusion apparently looks minor conflict but ultimately on total appreciation of evidence, it has emerged as a major confusion. Undisputedly, the office is situated on the second floor and when it is the say of the prosecution itself that the rest of the members of the raiding party had followed the panch no.1 and the complainant till they entered the room of the Zonal Office and they had taken their positions, and it has also emerged that they were able to reach in couple of seconds on getting the agreed signal from the complainant, then whether the amount was really accepted by the appellant when some

other members of the raiding party were also present either in the balcony, gallery or lobby, is the question. So it is risky to believe the version of the panch no.1 alleging that the amount was accepted by the appellant in the lobby when he was just at the door opening to that lobby.

19. This panch no.1 when was to be examined by the learned Special Judge, had not appeared before the Court. It appears that more than one attempt perhaps was made and, therefore, the Court had issued warrant to secure his presence. The application Ex.23 reveals that the panch no.1-Ramnikbhai Vyas was instructed in writing to appear in the Court on a given date and he had failed in doing so and, therefore, the Court issued bailable warrant of Rs.250/- against him on 28th January 1991. Thereafter, the panch no.1 had appeared and his deposition is found to have been recorded on 03rd July 1991. It is in evidence that one can enter into the room where the staff members used to sit, can go through the room where Shri

Solanki/ Zonal Officer used to sit. It is in evidence that the so-called lobby or gallery is having 3½ ft. width. In response to a pointed question asked to the panch no.1, he has replied in the cross-examination that he is not aware whether the appellant had asked the complainant as to what has been done. In response to the query raised by the Court, the panch no.1 replied that the complainant had told the appellant by gesture that he has brought and the question was asked by the appellant as to what has been done, was prior to telephone call which he had made, after the entry of panch no.1 and the complainant. When the panch no.1 states that the muddamal currency notes were kept in the pocket of Zabhbha of the complainant and the complainant says that he took out the currency notes from the pocket of his trouser, then at least without treating the panch no.1 hostile, he ought to have been confronted because the version of the panch no.1 of having muddamal currency notes in the Zabhbha, is in conflict with the first part of panchnama. So the place

of currency notes was changed by the complainant in between or the panch no.1 had not supported the case of the prosecution to that extent, is a point which requires appreciation keeping in mind the nature of defence taken by the appellant. It is very likely that the complainant may be in a mood to see that the appellant is trapped and the panch no.1 may not be knowing that by uttering words which are capable of carrying more than one meaning, he is being used in laying a trap to implicate the appellant in a serious offence. Therefore only, the complainant might have played either with the panch no.1 or ACB officers or both. The Court cannot legally infer anything on conjectures or surmises. But the things which are there on record have to be appreciated from all perspectives. The Courts, therefore, insist for a fair and unbiased investigation as well as the trial, and each witness is asked to stand the test of cross-examination. The panch no.1 is the person who had introduced himself in a contrary way than instructed, whose behaviour till the trap is

not found to be very much normal, and whose evidence has also created confusion as to the place where the ultraviolet lamp examination was carried out vis-a-vis the place where the appellant was intercepted by the Trapping Officer, and hence, it is risky to accept the words of the panch no.1 as words of a transparent and straight forward person, as observed by the learned trial Judge. When it is clear that the panch no.1 was dragged to the Court under a warrant and if he has deposed in a convenient manner, whether this Court should express the agreement with the finding recorded by the learned trial Judge that the version of the panch no.1 is the version of a transparent and straight forward person or to express disagreement with the finding or not?

20. The case of the appellant is not a case of denial. The defence plea is a qualified plea of defence. It is not a straight forward case of justification but the appellant as per the accepted principles of criminal jurisprudence, is entitled to place alternative pleas of

defence and one plea may not be consistent to the other. The appellant can show more than one probability saying that it would not be safe for the Court to accept the case of the prosecution, as placed. Here as discussed earlier, there are documents to show that the close relative of the complainant had financial dealings with the appellant. When the transaction as to the sale of scooter had taken place between the appellant and Nandkishor-cousin of complainant, the relations between the appellant and the said Nandkishor were cordial. The brother of Nandkishor was serving with the complainant. Thereafter, the complainant was compelled to file a criminal complaint against the brother of Nandkishor for the financial irregularities committed by him while in service. Ex.20 is the copy of the Criminal Inquiry Case No.65 of 1990 filed by the complainant against Mukesh Damodar and Puran Damodar, both real brothers of Nandkishor. The said complaint was filed for the offences punishable under Sections 420, 406 and 114 of the Indian Penal Code. The contents

of the complaint reveal that on 24th April 1990, both the accused persons of the said complaint had misappropriated a sum of Rs.866/- collected out of the sale of material from the shop of the complainant along with Rs.3600/- and one another amount of Rs.3600/- on the same day i.e. 21st April 1990. It is also mentioned in the complaint that the amount of Rs.3000/- was also taken away by both the accused of the said complaint on 13th March 1990. The incident of sale of a scooter had taken place in June, 1988. Now the date of filing of the Criminal Complaint against both the accused persons by the complainant, as reflected in document Ex.20, is 23rd April 1990. Thus, it was not easy for the appellant to examine Nandkishor as defence witness. In July, 1991, during the course of trial, as Nandkishor or Mukesh would not agree to the proposition placed by the appellant that on the given date still some amount was outstanding against the purchase of the scooter from the appellant, the learned trial Judge initially had exhibited the signature portion of the writing executed at

the time of sale of scooter. But the decision given by the learned trial Judge simultaneously with the judgment creates a legal situation that the entire document has been received in evidence. It has been proved by the competent witness and nothing fruitful has come on record even during the course of cross-examination of the defence witness examined. No good legal or logical reasons have been assigned by the learned trial Judge for not accepting the version of the defence witness who has stated in so many words about the earlier transaction which had taken place as to the sale of scooter. This writing Ex.40 (Orig. Mark B) ought not to have been viewed with any doubt because it was practically not possible for the complainant to obtain the signature on post-dated writing dated 16th June 1988 of Nandkishor which was capable of incurring financial liability. True it is that the accused can try to create any evidence to save himself and it is not so difficult to obtain signature on a post-dated document. But this document bears the signature of Nandkishor as well as Mansuri

Mohd. Kasam. The Court cannot put itself in the chair of an expert. The learned trial Judge could positively compare the handwriting or the signature while evaluating the oral evidence of Nandkishor, which very much resembles the signature on the document Ex.40 and this document is dated 16th June 1988, which clearly states that even on that day some amount of the appellant was due to Nandkishor. A cheque which was dishonoured is of 19th March 1989 and the same was returned by the Bank on 25th March 1989. Two different Banks were in picture and the signature on the cheque has been proved to be the signature of Nandkishor Damodar. If the appellant was keen to create a document for his defence then he would have entered the date proximate to the date reflected in the cheque instead of June, 1988. So there is enough force in the argument of Shri A.D. Shah, learned counsel appearing for the appellant, that there were financial dealings between the said Nandkishor and the appellant with a probability of intervention of the complainant in the entire dealing. Normally it is the experience

of the Court that there is consistent practice with the ACB to refer to whether the complainant has or had any financial dealings with the accused in the complaint itself. It is normally mentioned that the complainant has no financial dealings or obligation with the accused named in the complaint. Here no such reference either positive or negative is found in the FIR. Whether the complainant had attempted to put curtain on such crucial aspects or he was not in picture at all qua the sale of scooter of the appellant, are the questions. But in absence of any reference in this regard in the complaint, has created a situation under which the Court can suspect that the complainant may have suppressed this aspect while unfolding his grievance.

21. On reading paragraph no.8 of the deposition of panch no.1, Shri A.D. Shah has argued that after all, this is a trap case and the prosecution evidence should be scanned closely. The act of handing over of the muddamal currency notes to the appellant and the

conversation if any had taken place prior to that, is the most crucial period and if material conflict is found in the version of the complainant and the panch or in the version of panch and panchnama drawn at the instance of the very panch, the Court should immediately at that time concentrate on the aspect as to what is the nature of defence theory.

22. The statement of the appellant recorded under Section 313 of the Code of Criminal Procedure, 1973, requires to be read and if any specific defence has emerged from such statement, the Court has to consider the probability pointed out by the appellant; and in all cases the accused persons are not supposed to examine defence witnesses. The explanation given by the appellant is supported by the aforesaid various documents. It is stated that the appellant was anxious to receive payment against the sale of is scooter and, therefore, he had demanded the amount of Rs.1500/- on 19th September 1988 from the complainant and had requested him to intervene and to bring Nandkishor before him as

he was avoiding the appellant. On the date of incident i.e. 22nd September 1988, the complainant was asked about the amount if he has brought.

23. When it is in evidence of the complainant that once the muddamal currency notes were on the table at the time when they were seen under the ultraviolet lamp, whether the explanation of the appellant can be said to be probable that the muddamal currency notes were placed back on the table as only the amount of Rs.200/- was not acceptable to him against the amount of Rs.1500/-. For the sake of argument, if it is accepted that the amount was recovered from the pocket of the appellant and it was not found on the table when the Trapping Officer reached, even then the contradiction in the basic story of the prosecution and the suppression of certain material aspects by the prosecution in the background of other facts like non-examination of Shri Solanki and the chequered history of the complainant as fair price shop dealer, make the case of the prosecution

doubtful. This may be an attempt by the complainant of implicating the appellant by the superior authorities during these days only. The complainant perhaps may be apprehending cancellation of his licence as fair price shop dealer. The order imposing penalty was issued on 21st September 1988 and the trap was arranged on 22nd September 1988. When the shop of the complainant was checked earlier and he was subjected to proceedings departmentally, the appellant was one of the key officers who had played some role, then this co-incident qua the crucial dates cannot be ignored because it is the say of the appellant that the complainant perhaps had generated some feelings against him and also against the officers of the Civil Supply Department. Non-examination of Shri Solanki has created some prejudice to the appellant, otherwise the defence counsel could have placed certain questions to falsify the facts stated by the complainant.

24. As discussed earlier, there is even confusion in the evidence as to the place where the

ultraviolet lamp examination was carried out after the raid. According to PW-3 Mayur, they were working in their room at about 02-00 p.m. on 22nd September 1988. He has also stated that on that day, necessary permits were issued against the demand made on 21st September 1988. The documents at Exhs.32 and 34 have been exhibited during the deposition of this witness and this witness has stated that when they were working in their room, from other room they heard hubbub and they came to know that the appellant has been caught. He has explained that the adjacent room is where the Zonal Officer and Inspectors sit. This witness has stated that on occasions Nandkishor was brining applications for complainant and complainant was bringing applications for issuance of permits, etc. of Nandkishor. He has also stated that the panchnama procedure was done in both the rooms but he was not sure as to where actually the second part of panchnama was drawn. It is not in evidence that in the room where the Zonal Officer and Inspectors were sitting, nobody else than the appellant was

sitting. When the members of the ACB had entered, the persons were sitting in the room and they were directed not to move, meaning thereby, the ACB members entered the room where the clerks including PW-3 were sitting.

25. The learned trial Judge has observed that there is evidence which can be said to be consistent qua the presence of anthracene powder marks on the hands of the appellant and there is also evidence under which it is possible to observe that at least once the muddamal currency notes had reached to the pocket of the appellant, then whether this is a fit case to raise presumption, was altogether a different question and according to me, the same has not been appreciated appropriately in the background of the defence taken by the appellant. As discussed in the foregoing paragraphs, the appellant has satisfactorily probablized his defence, so it is possible for this Court to conclude that the amount was not given under any previous understanding of giving bribe/ illegal gratification and/or the

amount was accepted knowing it to be the amount of illegal gratification. The nature of evidence should be cogent. It is settled legal position that there is vast difference between 'may' and 'must'. The defence theory puts the case of the prosecution in the category of 'may', and therefore, it would not be safe for this Court to link the appellant with the crime raising any presumption. When it is accepted principle of law that the presumption can be rebutted by showing some reasonable probability, the appellant ought to have been given benefit of doubt by the learned trial Judge.

26. It is relevant to note that even as per the panch no.1 when he along with the complainant had reached at the table where the appellant was sitting, nobody else from the staff member was present and at that time, the appellant was talking on telephone and the conversation between the appellant and complainant had lasted for about 1 to 2 minutes. When the panch no.1 himself has stated that he had no idea

whether the appellant had asked the complainant as to what had been done. As discussed earlier, after this answer given by the panch no.1 during the course of cross-examination, a pointed question was asked by the Court and it is clear from the answer given by this witness that before initiating the talk on telephone, the appellant had asked whether he has brought and and at that time, the complainant by gesture had said that he has brought. So no discussion between the appellant and the complainant had taken place under which it could be inferred that this conversation must be in reference to the permit which the appellant was to issue or had issued. Immediately thereafter the panch no.1 had said that by gesture the things were decided but he has said that he does not recall as to what conversation actually had taken place between them. From the answers given to the suggestions made to panch no.1 in paragraph no.7 of the cross-examination, it is clear that the conversation between the complainant and the appellant had remained ambiguous. Thereafter,

they had come out. It is not the say of the panch no.1 or the complainant that after accepting the amount, the appellant had returned to his table. At one place in the evidence it has come on record that the members of the raiding party were on the ground floor and at the other place, it has come on record that the members of the raiding party had followed and they had been to the office of the appellant, and they had scattered. According to the Trapping Officer, on getting the agreed signal he had rushed to the office of the appellant and the procedure of examination of muddamal currency notes, etc. was carried out in the room of the appellant where the appellant was sitting. On the other hand, the panch no.1 in paragraph no.8 has said that when the Police Inspector Shri Vyas had reached, at that time the appellant was in the room where the clerks used to sit and the ultraviolet lamp examination procedure was carried out in the said room i.e. the staff room, and at that time three to four staff members were there in the office and the staff members were not permitted

to move from their respective work place. This conflict takes the alleged procedure undertaken by the Investigating Officer in presence of panch no.1 as to the recovery of muddamal currency notes under a shadow of some doubt. The learned trial Judge has not elaborately discussed and appreciated the evidence as to the conduct of the complainant and also panch no.1. The conduct of the complainant prior to the trap and subsequent thereto as well as the conduct of the panch no.1 of not acting or behaving as per the instructions given to him by the Trapping Officer has been ignored. The learned trial Judge has not applied mind on one crucial issue that if the appellant was a corrupt or a dishonest public servant and was in a mood to extort money from the complainant under a threat of harassment, the complainant was very well available to him on 19th September 1988. On that day also, the appellant was in-charge of the office of Shri Solanki. Why the appellant did not raise any such demand of monthly instalment on 19th September 1988 itself and cleared the request to grant permit on the

same day. If the complainant had been to the Zonal Office on 20th September 1988, why he has been to the office without a written request. Whether any officer would give threat to harass after granting of permit on 21st September 1988, was the question, which ought to have been considered by the learned trial Judge. One Shri M.D.Agrawal has signed one application for the complainant on 22nd September 1988. The raid was carried out on that very day. On that day, the request to grant permit for three pamolin oil was made on behalf of the complainant and the appellant had granted that request on that very day. It is possible to infer that this permission must have been granted prior to arrival of the raiding party in the office on 22nd September 1988. If the appellant was keen to have illegal gratification for the work, he could have kept the application of the complainant pending till the arrival of the complainant. When it is the case of the prosecution that the complainant was asked to come with the amount of Rs.200/- on 22nd September 1988, and because of the same the

trap was arranged, the appellant would not have issued permits for three edible oil tins without any delay, keeping that application pending, that too, by transferring the quota from the quota of one another fair price shop dealer. It is possible to argue both ways that as he was assured about the illegal gratification, he may have done that work, but it is also equally possible to submit that this conduct of the appellant is consistent to his innocence and inconsistent to his guilt. All these aspects have not been appropriately appreciated by the learned trial Judge, which make the conviction bad. The inferences can be drawn by the Court on the evidence but such inferences not only should be logical but also legal and no other inference than the inference drawn by the Court should be possible. Certain conjectures are also there in the judgment and order of conviction and sentence; e.g. the learned trial Judge ought to have thought as to whether the said Shri M.D.Agrawal who had been to the office of the appellant to get the permit for three pamolin oil tins, could have

been examined as prosecution witness or the Trapping Officer, after seizing the documents, should have recorded his statement and cited him as a prosecution witness. I am told that his was Mitesh D. Agrawal. If the statement of the said Mitesh D. Agrawal was recorded, he could have been examined by prosecution. So non- examination of this witness also has resulted into some prejudice to the defence side. When Ex.33 is relied upon by the prosecution, the prosecuting agency ought to have examined as to why this could have happened on 22nd September 1988 i.e. the day of trap. For short, in the judgment and order of conviction and sentence under challenge certain crucial questions have not been either discussed or answered while appreciating the evidence by the learned trial Judge and hence, the present appeal is required to be allowed. This is a case where the learned trial Judge could have given benefit of doubt to the present appellant, keeping the scope of initiation of departmental proceedings open.

27. In view of aforesaid observations and discussion, the present appeal is hereby allowed. The judgment and order of conviction and sentence dated 31st July 1991, passed by the learned Special Judge, Ahmedabad City, in Special Case No.12 of 1989, is hereby quashed and set aside. The appellant is hereby ordered to be acquitted from all the charges levelled against him in respect of the offence in question by giving him benefit of doubt. The amount of fine, if any paid, be refunded to the present appellant on his proper identification. The bail bond, if any, executed by the appellant shall stand discharged.

(C.K. Buch, J)

Aakar